

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Express Mail & Priority Mail
Express Mail & Priority Mail Contract 13

Docket No. MC2013-34

Competitive Product Prices
Express Mail & Priority Mail Contract 13
(MC2013-34)
Negotiated Service Agreement

Docket No. CP2013-45

PUBLIC REPRESENTATIVE COMMENTS ON
POSTAL SERVICE REQUEST TO ADD
EXPRESS MAIL & PRIORITY MAIL CONTRACT 13
TO COMPETITIVE PRODUCT LIST

(January 31, 2013)

The Public Representative hereby provides comments pursuant to Order No. 1635.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Request to add Express Mail & Priority Mail Contract 13 to the competitive product list.² The Postal Service's Request includes a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. § 3633(a), and a copy of Governors' Decision No. 11-6. The Postal Service also filed (under seal) a contract related to the proposed new product, and supporting financial data.

¹ Notice and Order Concerning Addition of Express Mail & Priority Mail Contract 13 to the Competitive Product List, January 24, 2013 (Order No.1635).

² Request of the United States Postal Service to Add Express Mail & Priority Mail Contract 13 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, January 23, 2013 (Request).

According to the Postal Service, Express Mail & Priority Mail Contract 13 is a competitive product “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). Request at 1. The Postal Service also maintains that the prices and classification underlying the instant contract are supported by Governors’ Decision No. 11-6.³

COMMENTS

The Public Representative has reviewed the instant contract, the Statement of Supporting Justification, as well as the financial data and the model filed under seal that accompanies the Postal Service’s Request. Based upon that review, the Public Representative concludes that Express Mail & Priority Mail Contract 13 should be categorized as a competitive product and added to the competitive product list. In addition, based on the financial workpapers filed by the Postal Service, it appears that the contract in its first year should generate sufficient revenues to cover costs and thereby satisfy the requirements of 39 U.S.C. § 3633(a).

Product List Assignment. Pursuant to 39 U.S.C. § 3642, the Postal Service requests that Express Mail & Priority Mail Contract 13 be added to the competitive product list. 39 U.S.C. § 3642 requires the Commission to consider whether “the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.” 39 U.S.C. § 3642(b)(1). Products over which the Postal Service exercises such power are categorized as market dominant while all others are categorized as competitive.

The Postal Service makes a number of assertions that address the considerations of section 3642(b)(1). Request, Attachment D, at 2. These assertions appear reasonable. Based upon these assertions, the Public Representative concludes

³ Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, March 22, 2011 (Governors’ Decision No. 11-6).

that the Postal Service's Request to add Express Mail & Priority Mail Contract 13 to the competitive product list is appropriate.

Requirements of 39 U.S.C. § 3633. Pursuant to 39 U.S.C. § 3633(a), the Postal Service's rates for competitive products must not result in the subsidization of competitive products by market dominant products; ensure that each competitive product will cover its attributable costs; and, ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service. Based upon a review of the financial model filed under seal with the Postal Service's Request, the Public Representative finds that the instant contract is should generate sufficient revenues to cover costs during its first year.

However, the Postal Service provides no data to demonstrate that the instant contract will comply with the requirements of 39 U.S.C. § 3633(a) in subsequent years. The contract contains several terms for annual adjustment of prices. Request, Attachment B. The Public Representative confirms that based on the review of the financial data the instant contract satisfies the requirements of 39 U.S.C. § 3633(a) during the first year. At the same time the Public Representative is mindful that the Postal Service will file cost, revenue and volume data in each year's Annual Compliance Report. That will aid the Commission in ensuring that the Express Mail & Priority Mail Contract 13 continues to comply with the requirements of 39 U.S.C. § 3633(a).

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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